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11/14/19*

November 4, 2019

The Honorable Madeline Cox Arleo
United States District Judge
United States District Court
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street, Room 4015
Newark, NY 07101

Re: *White, et al., v. Samsung Electronics America, Inc., et al.*,
Case No.: 2:17-cv-01775-MCA-SCM

Dear Judge Arleo:

We are counsel for Defendant Sony Electronics Inc. (“Sony”), in the above-referenced matter. We write to respectfully request the Court’s permission to file a short Reply in further support of Samsung Electronics America, Inc.’s (“Samsung”) Motion for Reconsideration of the Court’s August 21, 2019 Order, to which Sony joined (the “Motion”). ECF No. 105, 106. The Motion also seeks alternative relief certifying the Court’s August 21, 2019 Order as to Plaintiffs’ Wiretap Act claim, if reconsideration is not granted. Presently, the Motion is returnable before the Court on November 11, 2019.

Samsung has filed a letter to Your Honor seeking permission to file a Reply Brief in support of the Motion. ECF No. 116. Samsung and Sony respectfully move to further “correct a clear error of law” and “to prevent manifest injustice”. Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

Plaintiffs make a number of inaccurate assertions in their Opposition to the Motion. The most egregious assertion being in Footnote 1, where Plaintiffs contend that:

“Defendants do not even attempt to deny that they surreptitiously wiretap consumers’ communications, personal information and private conversations, or that they secretly transmit consumers’ communications, personal information and private conversations to third parties for profit, or that they do so without first obtaining informed consent from consumers.”

The Honorable Madeline Cox Arleo
November 4, 2019
Page 2

(see Opp., pg 1, note 1).

Sony categorically denies Plaintiffs' allegations of wiretapping.

In their Opposition, Plaintiffs also make a new argument and introduce new case law, on which their reliance is misguided and requires clarification in a short Reply. Samsung's proposed Reply Brief filed today (ECF No. 115) further clarifies the extent of Plaintiffs' misstatements.

Sony respectfully seeks to file a Reply in order to correct and preserve the record should this matter be the subject of Interlocutory Appeal—which both Samsung and Sony have sought as an alternative to reconsideration. Plaintiffs would suffer no prejudice should the Court grant this application and permit Sony to file a Reply brief. To the contrary, Sony would suffer substantial prejudice if it is not permitted to correct and preserve the record. In the interest of time and to avoid any extensions to the briefing schedule so-ordered by the Court (ECF No.112), Sony has attached its proposed Reply as Exhibit A to this letter. The return date for the Motion is November 11, 2019, and, if permitted by the Court, Sony is prepared to file the attached Reply as soon as possible.

Thank you for your consideration of this matter.

Respectfully submitted,

/s/ Mark S. Melodia

Mark S. Melodia

Encl.

cc: All counsel of record (via ECF)